

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Commodity Futures Trading Commission,

Case No.: 2:19-cv-01697-JAD-DJA

Plaintiff

v.

**Final Judgment of Disgorgement, Civil  
Penalty, Restitution, and Permanent  
Injunction**

David Gilbert Saffron a/k/a David Gilbert and  
Circle Society, Corp.,

Defendants

Plaintiff Commodity Futures Trading Commission filed a Complaint for Injunctive Relief, Restitution, Disgorgement, and Civil Monetary Penalties against David Gilbert Saffron a/k/a David Gilbert and his business entity, Circle Society, Corp., for violations of the Commodity Exchange Act, 7 U.S.C. §§ 1–27f (2012), and Regulations promulgated thereunder, 17 C.F.R. pts. 1–190 (2019). The Commission has moved under Federal Civil Procedure Rule 55(b) for default judgment against Saffron and Circle Society; for grants of permanent injunctive relief, restitution, disgorgement, and a civil monetary penalty; and for the related relief of additional sanctions, a show-cause order, and to strike one of the defendants’ filings.<sup>1</sup> After a hearing on the merits and having considered the pleadings, declarations, exhibits, and memoranda filed by the parties, I granted the motion for default judgment, denied the motion to strike, and denied as moot the motions for sanctions and for a show-cause order.<sup>2</sup> Because I articulated my findings and conclusions on the record, the transcript of the hearing serves as the record of my ruling. But I enter this order to memorialize the outcome of the hearing.

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<sup>1</sup> ECF Nos. 61, 95, 62, 98.

<sup>2</sup> ECF No. 107 (minutes of proceedings).

1 Whether to grant a motion for default judgment lies within the trial court's discretion,<sup>3</sup>  
2 which is guided by the seven factors outlined by the Ninth Circuit in *Eitel v. McCool*.<sup>4</sup> As I  
3 found and concluded during the hearing, the Commission has demonstrated that every *Eitel*  
4 factor weighs in favor of entering default judgment against Saffron and Circle Society. The  
5 rehearsed excuses that the defendants offered during the hearing for their continued failure to  
6 comply with this court's orders, and their ongoing failure to offer any colorable defense to the  
7 Commission's claims, animate the Commission's default-judgment arguments and underlie my  
8 conclusion that default judgment is warranted here.

9 The Commission has demonstrated that a permanent injunction under 7 U.S.C. § 13a-1(a)  
10 should be entered against both defendants. The Commission's well-pled allegations and  
11 evidence shows that Saffron and Circle Society violated:

- 12 a. 7 U.S.C. § 6o(1)(A)-(B) and 17 C.F.R. § 32.4;
- 13 b. 17 C.F.R. § 4.20(a)(1), (b), and (c); and
- 14 c. 7 U.S.C. § 6m(1).

15 The same allegations and evidence also demonstrate that Saffron violated 7 U.S.C. § 6k(2). The  
16 Commission has further established that there is a reasonable likelihood that Saffron and Circle  
17 Society will continue to violate the Act and Regulations unless they are permanently restrained  
18 and enjoined by this court. I am satisfied that the intentional and egregious nature of Saffron's  
19 and Circle Society's fraudulent conduct warrants permanent injunctive relief, including  
20 registration and trading bans.

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23 <sup>3</sup> *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986).

<sup>4</sup> *Id.* at 1471–72.

1 Finally, the Commission has demonstrated that awards of restitution in the amount of  
 2 \$14,841,280, disgorgement in the amount of \$15,815,967, and a civil monetary penalty of  
 3 \$1,484,128 are warranted under these circumstances. I find that the restitution award will make  
 4 the victims of Saffron's and Circle Society's fraudulent scheme whole. The disgorgement award  
 5 will allow the government to claw back any profits and gains that the defendants wrongfully  
 6 obtained by their scheme. And the civil penalty is reasonable and appropriate given the gravity  
 7 of the defendants' violations.

8 IT IS THEREFORE ORDERED that the Commission's motion for default judgment  
 9 [ECF No. 97] is **GRANTED**. The **Clerk of Court** is directed to **ENTER JUDGMENT** in  
 10 favor of the Commodity Futures Trading Commission and against David Gilbert Saffron a/k/a  
 11 David Gilbert and Circle Society, Corp., jointly and severally, **in the total amount of**  
 12 **\$32,141,375**. Post-judgment interest on the entire amount of the judgment will run at the rate of  
 13 0.07%, compounded annually, from March 29, 2021, until satisfied.<sup>5</sup>

14 IT IS FURTHER ORDERED that:

15 **A. Restitution**

16 1. National Futures Association (NFA) is appointed to monitor and distribute  
 17 payments made by the defendants against the \$14,841,280 restitution obligation that they owe to  
 18 their participants. NFA must collect restitution payments from the defendants and make  
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20 <sup>5</sup> Post-judgment interest is mandatory "on any money judgment in a civil case recovered in a  
 21 district court." 28 U.S.C. § 1961(a); see *Planned Parenthood of Columbia/Willamette Inc. v.*  
 22 *Am. Coal. of Life Activities*, 518 F.3d 1013, 1017–18 (9th Cir. 2008). "[F]ederal law determines  
 23 the rate of post-judgment interest[.]" and it "should be awarded on the entire amount of the  
 judgment . . . ." *Lagstein v. Certain Underwriters at Lloyd's of London*, 725 F.3d 1050, 1056  
 (9th Cir. 2003). Applicable federal law provides that interest must "be calculated from the date  
 of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity  
 Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the  
 calendar week preceding the date of the judgment." 28 U.S.C. § (a) (period omitted).

1 distributions as set forth below. Because the NFA is acting as an officer of this court in  
2 performing these services, it will not be liable for any action or inaction arising from its  
3 appointment as monitor, other than for actions involving fraud.

4       2.       The NFA must oversee the defendants' restitution obligation and has the  
5 discretion to determine the manner of distribution of the funds paid in a manner that is equitable  
6 to the defendants' participants as identified by the Commission. The NFA may defer distribution  
7 until such time as it deems appropriate. If the amount of restitution payments are so *de minimis*  
8 that the NFA determines that the administrative cost of making a distribution to eligible  
9 participants is impractical, the NFA may, in its discretion, treat the restitution payments as civil  
10 monetary penalty payments.

11       3.       At the beginning of each calendar year, the NFA must provide the Commission  
12 with a report detailing the disbursement of funds to the defendants' participants during the  
13 previous year. The NFA must transmit this report, along with a cover letter identifying the name  
14 and docket number of this case, to:

15               Chief Financial Officer, Commodity Futures Trading Commission  
16               Three Lafayette Center, 1155 21st Street, N.W.  
17               Washington, D.C. 20581

18       4.       The defendants must pay their restitution obligation under this order to the NFA  
19 in the name of "David Saffron Restitution Fund" and must send their payments by electronic  
20 funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank  
21 money order to:

22               Office of Administration, National Futures Association  
23               300 South Riverside Plaza, Suite 1800  
                  Chicago, Illinois 60606

1 Payment must be accompanied by a cover letter identifying the defendants and the name and  
2 docket number of this case. The defendants must simultaneously transmit copies of the cover  
3 letter and the form of payment to:

4 Chief Financial Officer, Commodity Futures Trading Commission  
5 Three Lafayette Center, 1155 21st Street, N.W.  
6 Washington, D.C. 20581

7 5. The defendants must cooperate with the NFA as appropriate to provide it with  
8 information that it deems necessary and appropriate to identify the defendants' participants to  
9 whom the NFA, in its sole discretion, may determine to include in any plan for distribution of  
10 any restitution payments. The defendants must execute any documents necessary to release  
11 funds that they hold in any repository, bank, investment, or other financial institution, wherever  
12 located, to make partial or total payment toward their restitution obligation.

13 6. The amount paid to each participant in restitution will not limit the ability of any  
14 participant to prove that a greater amount is owed from the defendants or any other person or  
15 entity, and nothing in this order should be construed to in any way limit or abridge the rights of  
16 any participant that exist under state or common law.

17 7. If any funds accrue to the U.S. Treasury for the satisfaction of the defendants'  
18 restitution obligation, those funds must be transferred to the NFA for disbursement consistent  
19 with the procedures set forth above.

20 **B. Civil monetary penalty**

21 1. The defendants must pay their civil monetary penalty obligation by electronic  
22 funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money  
23 order. If payment is to be made other than by electronic funds transfer, then the payment must  
be made payable to the Commodity Futures Trading Commission and sent to:

MMAC/ESC/AMK326  
 Commodity Futures Trading Commission, Division of Enforcement  
 6500 S. MacArthur Blvd.  
 Oklahoma City, OK 73169  
 (405) 954-6569 (phone)  
 (405) 954-1620 fax  
 9-AMC-AR-CFTC@faa.gov

2. If the defendants elect to make payments by electronic funds transfer, the defendants must contact Marie Thorne or her successor at the address above to receive payment instructions and must fully comply with those instructions. Any payment must be accompanied by a cover letter identifying the defendants and the name and docket number of this case. The defendants must simultaneously transmit copies of the cover letter and the form of payment to:

Chief Financial Officer, Commodity Futures Trading Commission  
 Three Lafayette Center, 1155 21st Street, N.W.  
 Washington, D.C. 20581

**C. Permanent injunction**

IT IS FURTHER ORDERED that David Gilbert Saffron a/k/a David Gilbert and Circle Society, Corp. and their agents, holding companies, alter egos, including any of their successors, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, are **permanently restrained, enjoined, and prohibited from** directly or indirectly:

1. Engaging in conduct that violates 7 U.S.C. §§ 6c(b), 6k(2), 6m(1), or 6o(1)(A)–(B) or 17 C.F.R. §§ 4.20(a)(1), (b), or (c) or 32.4;

2. Trading on or subject to the rules of any registered entity, as that term is defined in 7 U.S.C. § 1a(40);

IT IS FURTHER ORDERED that the Commission's motion to strike notice [ECF No. 95] is **DENIED** and the Commission's motions for additional sanctions [ECF No. 62] and for an order to show cause [ECF No. 98] are **DENIED as moot**.

This court shall retain jurisdiction of this action to ensure compliance with this order and for all other purposes related to this action, including any motion by the defendants to modify, or from relief from, the terms of this order.

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